

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**ELITE FREIGHT SYSTEMS, INC.,

Respondent.**

**Docket No. FMCSA-2009-0132¹
(Southern Service Center)**

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

1. Background

On March 9, 2009, the North Carolina Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Elite Freight Systems, Inc., proposing a civil penalty of \$1,990 for three alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the Notice of Claim, which was based upon a February 6, 2009, compliance review (CR), charged Respondent with: (a) one violation of 49 CFR 382.301(a), with a proposed civil penalty of \$880, for using a driver before the motor carrier has received a negative pre-employment controlled substance test result; (b) one violation of 49 CFR 387.7(a), with a proposed civil penalty of \$400, for operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage; and (c) one violation of 49 CFR 395.8(k)(1), with a proposed civil penalty of \$710, for failing to preserve for six months a driver's record of duty status.²

On March 16, 2009, Respondent replied to the Notice of Claim, denying the

¹ The prior case number of this matter was NC-2009-0090-US0123.

² See Government Exhibit A to Field Administrator's Consent to Hearing. The Statement of Charges portion of the Notice of Claim was not included with the exhibit.

violations and seeking binding arbitration. Regarding the negative pre-employment controlled substance test result charge, Respondent argued that the driver in question was driving a vehicle that was leased to another carrier. As to the minimum levels of financial responsibility charge, Respondent contended that the vehicles in question were leased to another authority, the trucks being lettered prematurely with Respondent's name and DOT number. Concerning the alleged failure to preserve a driver's record of duty status for six months, Respondent averred that it was unable to preserve records that did not exist: The driver in question had been employed less than 30 days at the time the audit began and had not been driving a commercial motor vehicle for the previous six months.³

On May 20, 2009, Claimant, the Field Administrator for the Southern Service Center, FMCSA, pointed out that binding arbitration is available only to a respondent that admits having violated the regulations. Because Respondent denied the alleged violation, Claimant maintained that binding arbitration was not available to Respondent. Nevertheless, Claimant believed the reply was, in essence, a request for a hearing, to which Claimant consented.⁴

2. Discussion

Claimant is correct that because Respondent denied the violations, binding

³ See Government Exhibit B to Field Administrator's Consent to Hearing.

⁴ In the title box, Claimant referred to Respondent as "PATSY SALMON, dba ELITE FREIGHT SYSTEMS INC." Nevertheless, the Agency's Safety and Fitness Electronic Records System (<http://www.safersys.org/>) lists Respondent's legal name as "Elite Freight Systems Inc." without the "dba." Neither the Notice of Claim nor Respondent's own certificate of service contains a "dba." In both the Notice of Claim and the certificate of service, Patsy Salmon is listed as the President of Respondent, not as the legal name of Respondent.

arbitration is not available to it.⁵ Claimant is also correct that a hearing should be held to resolve the issues in this matter. Therefore, pursuant to 49 CFR 386.16(b)(4)(C), the matter is referred to the U.S. Department of Transportation's Office of Hearings.⁶

3. Appointment of Administrative Law Judge

In accordance with 49 CFR 386.54, an administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a decision on all issues, including the civil penalty, if any, to be imposed. The proceeding shall be governed by subparts D and E of 49 CFR Part 386 of the Rules of Practice and all orders issued by the administrative law judge.

It Is So Ordered.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

5-27-09
Date

⁵ See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

⁶ Two other matters involving carriers with different DOT numbers but located at the same address and with the same telephone number as Respondent are also being referred to hearing this day: *In the Matter of Jeffrey S. Salmon dba Elite Transportation*, Docket No. FMCSA-2009-0134, and *In the Matter of Jefferson P. Salmon dba Elite Freight Systems*, Docket No. FMCSA-2009-02135. The decision on whether these cases should be consolidated will be made by the Office of Hearings. (Note that although the Notice of Claim in Docket No. FMCSA-2009-0135 was sent to a different address than the Notices of Claim in the other two cases, the Agency's Safety and Fitness Electronic Records System (<http://www.saferys.org/>) lists the same address and telephone number for all three carriers.)

CERTIFICATE OF SERVICE

This is to certify that on this 28 day of May, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Patsy Salmon, President
Elite Freight Systems, Inc.
10601 Ponderosa Service Road
Wake Forest, NC 27587
(919) 562-1824 (phone)

One Copy
U.S. Mail

Deborah Stanziano, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
1800 Century Blvd., Suite 1700
Atlanta, GA 30345
(404) 327-7375 (phone)
(404) 327-7359 (fax)

One Copy
U.S. Mail

Darrell L. Ruban, Field Administrator
Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Boulevard, Suite 1700
Atlanta, GA 30345

One Copy
U.S. Mail

Chris M. Hartley
North Carolina Division Administrator
Federal Motor Carrier Safety Administration
310 New Bern Avenue, Suite 468
Raleigh, NC 27601

One Copy
U.S. Mail

The Honorable Ronnie A. Yoder
Chief Administrative Law Judge
Office of Hearings, M-20
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
East Building Ground Floor
Room E12-320
Washington, D.C. 20590

One Copy
Personal Delivery

FMCSA-2009-0132

U.S. Department of Transportation
Docket Operations, M-30
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Original
Personal Delivery

Ginnie Miller